APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/272,911	03/19/1999	TAKESHI KIKUCHI	25484.00715	6247

7590   04/23/2003

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EXAMINER
STEVENS, ROBERTA A

ART UNIT	PAPER NUMBER
2665	

DATE MAILED: 04/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

PR4

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 February 2003</u> .

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-28</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-28</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)		4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) ☐ Notice of Informal Patent Application (PTO-152)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .		6) ☐ Other: .

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 6-9, 15-18 and 24-27 rejected under 35 U.S.C. 102(e) as being anticipated by

Murakami.

3.   Murakami teaches (abstract and figure1, 2 and 8) a communication device and method

comprising a receiver which receives audio data, data amount information indicating data

amount of the audio data that has been controlled and media data other than audio (MIDI data); a

data amount restorer which restores the controlled data amount of the audio data to the original

data amount with reference to the data amount information; and a reproduction indicator which

indicates reproduction of the audio data whose data amount is restored the restorer

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1-2, 4. 5-11, 13-21 and 22-28 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Murakami.

6.   Regarding claims 1-2, 5, 10-11, 14, 19-21, 23 and 28, Murakami teaches (abstract and

figure 1, 2 and 8) a communication device and method comprising: a data amount controller

which controls the amount of the digital audio data to be transmitted in accordance with the

transfer rate; and a transmitter which transmits the audio data whose data amount is controlled by

data amount controller and the media data other than the audio data and data amount information

indicating data amount of the audio data controlled by data amount controller.

7.   Murakami does not teach a transfer rate estimator.

8.   Sawaya teaches (abstract) a transfer rate estimator, which estimates transfer rate of data

before transmission. It would have been obvious to tone of ordinary skill in this art to adapt to

Murakami's system Sawaya's transfer rate estimator to provide a suitable rate for transmission

of signals

9.   Regarding claims 4, 13 and 22, as mentioned above, Murakami and Sawaya teach all of

The limitations in claims 1 and 10 and 19.

10.   As for the data amount controller thinning out the audio data to control the data amount,

this limitation is in no way novel and it would have been obvious to one of ordinary skill in this

art to adapt to Murakami and Sawaya's system this or any other obvious control method as a

matter of design choice.

Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure. Suglyama (U.S. 5790745) is cited to show the state of the art.

12.   Any inquiry concerning the communication or earlier communications from the examiner

should be directed to Roberta Stevens whose telephone number is *(703) 308-6607.* The

examiner can normally be reached on Monday through Friday from 9:00 am to 5:30 p.m.

13.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor can be reached on *(703) 308-6602.*

14.   Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the group receptionist whose telephone number is *(703) 305-3900.*

15.   **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314

For informal draft communications, please label "PROPOSED" or "DRAFT"
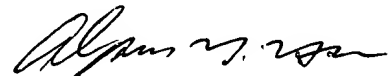
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,

Arlington, VA. Sixth Floor (Receptionist).

Roberta A. Stevens

Patent Examiner

04-16-03

**ALPUS H. HSU
PRIMARY EXAMINER**